C.F. 100/-

P.R. No. 2483/06
Presented by Shri A.J. Rizvi
dated 6/5/06

SINGLE BENCH

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2419 /2006

Petitioner : Shri Ram Kol,
S/o Late Ramlal,
Aged about 38 years,
Sarpanch (removed),
R/o village- Khongapani,
Coal Dafai, District- Koria (C.G.).

- Versus -

Respondents :
1. State of Chhattisgarh,
Through Secretary, Department of
Panchayat, D. K. S. Bhawan,
Raipur (C.G.).
2. Sub Divisional Officer(Revenue),
Manendragarh, Koria,
District- Koria (C.G.).
3. Tahsildar,
Manendragarh,
District- Koria (C.G.).
4. Collector,
Koria (C.G.).

RECEIVED-COPY
D. Rabale 6/5/06
CLERK to A. G. BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT IN THE NATURE OF MANDAMUS, PROHIBITION, CERTIORARI ETC. OR ANY OTHER APPROPRIATE DIRECTION TO DO JUSTICE IN THE MATTER.

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2419 of 2006

Shri Ram Kol

-Versus-

State of Chhattisgarh & others

POST FOR ORDER ON 12th JULY, 2006

Sd/-
L.C. Bhadoo
Judge

(46)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.2419 of 2006

Shri Ram Kol

-Versus-

State of Chhattisgarh & others

Present:

Shri Vinay Pandey, Advocate:	For petitioner.
Shri Sumesh Bajaj, Govt. Advocate:	For respondents.

ORDER

(Passed on 12th July, 2006)

L.C. BHADOO, J.

1. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has questioned legality, propriety and correctness of the resolution Annexure-P/3 passed by the Gram Panchayat Khongapani whereby the petitioner has been removed from the post of Sarpanch by way of no confidence motion.

2. Brief facts leading to filing of this writ petition are that on 10-4-2006 one Up-Sarpanch and 13 Panch of Gram Panchayat Khongapani gave a notice under Rule 3 (1) of the Madhya Pradesh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janapad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994 (hereinafter referred to as 'the Niyam, 1994) to the Prescribed Authority. The Prescribed Authority on receiving notice and after satisfying himself about the admissibility of the notice, fixed 24th April 2006 for consideration of the motion in a meeting to be held in Gram Panchayat at 12 noon and Tehsildar Mr. J.L. Pemra was appointed as Presiding Officer. Notices were despatched and meeting was held on 24th April 2006 at 12 noon and in that meeting vide resolution Annexure-P/3 15 Panchas cast their votes in favour of the motion and one vote was cast against the motion.

(47)

The Prescribed Authority held that the motion is carried out. The Prescribed Authority vide order dated 25-4-2006 gave information to the Collector.

3. The main challenge in this writ petition filed by the petitioner to the said resolution is that the notice to the prescribed authority was not given in conformity with sub-rule (1) of Rule 3 of the Niyam, 1994 in the prescribed form. The second ground of challenge is that the Sarpanch i.e. petitioner herein was not given opportunity to speak at the time of motion in conformity with sub-rule (3) of Rule 5 and same was the argument of learned counsel for the petitioner.

4. Having heard learned counsel for the petitioner, I have perused the documents. Sub-rule (1) of Rule 3 is reproduced as under:-

> "Elected members of Gram Panchayat, Janpad Panchayat or Zila Panchayat desiring to move a motion of no confidence against the Sarpanch or Up-Sarpanch of a Gram Panchayat or President or Vice President of Janpad or Zila Panchayat, as the case may be, shall give a notice thereof to the prescribed authority in the form appended to these rules."

5. Perusal of the form shows that it is to be addressed to the prescribed authority and then paragraphs contemplate that the persons who want to move a motion to sign that and they should mention against whom no confidence motion is proposed, and thereafter, they have to give grounds for no confidence motion. Copy of the notice which was given by Panchas and Up-Sarpanch in this case to the prescribed authority is Annexure-P/1. It is true that same is not exactly as per the format. But, perusal of the said notice shows that it is addressed to the prescribed authority and the grounds for no confidence motion have also been mentioned in which it has been written that Sarpanch of the village is working arbitrarily, in his own way and he is misusing the Gram Panchayat's fund. He is not hearing Panchas, and all the signatory Panchas are sufferer, therefore, they have decided to bring

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no confidence motion against the Sarpanch. If no action is taken, then they should be suspended, as Sarpanch, Secretary and one Panch are running whole show and Panchas are not being heard.

6. It is true that the format has been prescribed but the contents of format are that the signatory Panchas should give notice against whom they want to bring no confidence motion. In the notice Annexure-P/1 Panchas and Up-Sarpanch have categorically stated that they want to bring no confidence motion against the Sarpanch as he is working arbitrarily, in his own way, he is misusing the Panchayat's fund, and whole activities of Panchayat are being run by Sarpanch, Secretary and One Panch in their own way. Therefore, grounds have also been mentioned in the notice Annexure-P/1, as such, I am of the considered opinion that notice Annexure-P/1 is sufficient compliance of sub-rule (1) of Rule 3 of the Niyam, 1994. It cannot be said that it is not in conformity with sub-rule (1) of Rule 3 of the Niyam, 1994. The only difference is that it has been written in paragraphs whereas, the form prescribed in the rules, in the first paragraph it is to be mentioned that against whom no confidence motion is being brought and thereafter grounds for no confidence motion 1, 2, 3,.... But, as has been mentioned above that in Annexure-P/1 grounds have also been given by Panchas and Up-Sarpanch as well as against whom they want to bring no confidence motion, therefore, in any manner, it cannot be said that the said notice is not in conformity with the rules, as such argument advanced by learned counsel for the petitioner is devoid of merit.

7. As far as second ground is concerned, perusal of the proceeding Annexure-P/3 shows that in the meeting in all 16 members of Panchayat were present including the petitioner and thereafter the presiding officer informed the Panchas who moved no confidence motion that if they want, they can withdraw, on which they said that they do not want to withdraw the motion.

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It is mentioned that opportunity was given for expressing their opinion on the motion. In the 3rd paragraph, it has been mentioned that even Sarpanch was given opportunity to speak. After discussion, the presiding officer gave ballots to all the members and they were informed the manner in which they have to cast their votes i.e. those who want to cast their vote in favour of the motion have to affix the symbol of "√" and those who want to cast their vote against the motion have to affix the symbol "X", therefore, second ground taken by the petitioner is also not tenable as the petitioner was given opportunity to speak.

8. No other point was raised by learned counsel for the petitioner before the Court.

9. In the result, for the foregoing reasons, the writ petition is devoid of merit, same is liable to be dismissed and it is hereby dismissed at the admission stage itself. No costs.

Sd/-
L.C. Bhadoo
Judge

Barve